



Appeal Decision

Site visit made on 18 January 2022

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2022

Appeal Ref: APP/L3245/W/21/3279075

Spring Cottage, Tenbury Road, Clee Hill SY8 3NE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Dale Vass against the decision of Shropshire Council.
 - The application Ref 20/04167/FUL, dated 10 October 2020, was refused by notice dated 8 February 2021.
 - The development proposed is erection of a dwelling and garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of proposed development given on the Council's Decision Notice differs to that provided on the planning application form. As I have not been provided with any evidence that the appellant agreed to such a change, I have used the description given on the application form. It is clear from the submitted plans that the proposal includes the formation of a vehicular access and installation of a treatment plant, and other documents confirm that the proposal is for a self-build dwelling.
3. The appellant submitted a Unilateral Undertaking during the appeal. I shall return to this matter below.

Main Issues

4. The main issues are:
 - whether the site is a suitable location for housing, having regard to local and national policies,
 - the effect of the proposal on the character or appearance of the Shropshire Hills Area of Outstanding Natural Beauty (SHAONB), and
 - if the site is deemed to not be suitable, or to harm the character or appearance of the SHAONB, whether there are other material considerations that would lead to a determination not in accordance with the development plan.

Reasons

Suitability of site location for residential development

5. The site is located on the western side of Tenbury Road and consists of an irregular shaped piece of open land which forms part of a field with an

agricultural use. The field is bounded by a hedge close to Tenbury Road and timber post and rail fencing with hedges and trees of varied densities along the other boundaries. The land level of the field rises broadly from its south-eastern corner towards its north-western boundary, and from its eastern boundary in a westerly direction before descending towards its western boundary. There are several public rights of way within the site and adjacent fields. For planning policy purposes, the site is located within the countryside.

6. The appellant seeks to construct an open market dwelling as supported by current 'Right to Build' legislation¹. Policy CS1 of the Shropshire Local Development Framework: Adopted Core Strategy, 2011, (CS), outlines the strategic approach to development across the County. The strategy includes seeking to ensure that rural areas will become more sustainable through a rural rebalance approach, which includes accommodating around 35% of the area's residential development in rural areas over the plan period. Such development will be located predominantly within Community Hubs and Community Clusters.
7. Outside of Community Hubs and Clusters development will primarily be for economic diversification and for affordable housing to meet the needs of local communities. The designated Community Hubs and Clusters are outlined in Policy MD1 of the Shropshire Council Site Allocations and Management of Development Plan, 2015, (SAMDev), which reinforces the strategic approach to housing distribution outlined in Policy CS1 of the CS. Although Clee Hill is designated as a Community Hub, the site lies outside the designated development boundary.
8. I understand that the CS and SAMDev are currently being reviewed. Having regard to paragraph 48 of the National Planning Policy Framework, (the Framework). I have not been provided with any details of the stage the review is at, whether there are any unresolved objections to policies, or the degree of consistency of emerging policies with policies in the Framework. I therefore attach little weight to the emerging policies.
9. Policy CS4 of the CS also seeks to focus development within Community Hubs and Clusters, unless it accords with Policy CS5 of the CS. Any open market housing is required to make a sufficient contribution to improving local sustainability, via a mix of 'local needs' housing and community benefits in the form of contributions to affordable housing and identified local services, facilities and infrastructure. The proposed dwelling would make a very small contribution to local sustainability. However, it would not provide 'local needs' housing (which is essentially affordable housing), and no contributions to affordable housing or local services, facilities or infrastructure are proposed.
10. Policy MD7a of the SAMDev seeks to strictly control new market housing development outside of the County Town, Market Towns and Key Centres and Community Hubs and Clusters. The policy allows for conversions, change of use of holiday let properties, replacement dwellings, 'exception site' dwellings and dwellings for essential rural workers. I have not been provided with any evidence to suggest that the proposal constitutes either of these types of development.
11. Policy CS5 of the CS seeks to control development in the countryside. It allows for development on 'appropriate sites' that maintain and enhance countryside

¹ Namely, the Self-Build and Custom Housebuilding Act 2015, as amended by the Housing and Planning Act 2016

vitality and character, where such development would improve the sustainability of rural communities by bringing local economic and community benefits; 'particularly where they relate to' certain small-scale economic developments or dwellings for agricultural, forestry or other essential countryside workers and affordable housing to meet a local need. I have not been provided with any evidence to suggest that the proposed dwelling constitutes either of the types of residential development allowed for within Policy CS5, and the scale of the economic benefits arising from the proposal would be minor.

12. Policy CS11 of the CS outlines the approach to meeting the housing needs of the area to create mixed, balanced, and inclusive communities, which includes consideration of the type, tenure, and affordability of housing development. The proposal does not constitute any of the development types outlined in Policy CS11.
13. I therefore conclude that the proposal does not accord with policies CS1, CS4, CS5 and CS11 of the CS, or policies MD1 and MD7a of the SAMDev. Collectively, these policies seek to ensure that residential development is directed to the designated 'sustainable' areas, which are based on the range and extent of services and facilities available within them and the opportunities available for the use of sustainable modes of transport. The proposal would therefore undermine the adopted strategic and development management policies.

Effect of the proposal on the SHAONB

14. Paragraph 176 of the Framework advises that great weight should be given to conserving and enhancing landscape and scenic beauty in, among other areas, AONBs, which have the highest status of protection in relation to such matters.
15. The proposed development would be sited a significant distance from Tenbury Road; and would not be perceived as being part of a group of dwellings or being related to the built-up edge of the village (which I discuss in more detail below).
16. I accept that the proposed buildings would not be sited on the highest contours of the field within which it would be located. However, due to the size of both proposed buildings, they would still be visible from the road and the properties opposite the site. Additionally, they would be highly visible and prominent in the landscape when viewed from the public rights of way within and close to the site.
17. There are several special qualities that contribute to the significance of the SHAONB, including the commons, heath, moorland, and rough grassland in and around the Clee Hills; and the patchwork of fields bounded by hedges and trees. I consider the proposed development, sited in a field of rough grassland, unrelated to other built form within the area, would erode some of the special qualities of the SHAONB. Consequently, I conclude that the proposal would significantly harm the character and appearance of the SHAONB.
18. The proposal does not therefore accord with policies CS5, CS6 and CS17 of the CS or policies MD2 and MD12 of the SAMDev, which collectively, and among other things, require development to respect, protect and enhance the natural environment and landscape, including the SHAONB.

Other Considerations and Planning Balance

Isolated homes in the countryside

19. Paragraphs 79 and 80 of the Framework advise that housing should be located where it will enhance or maintain the vitality of rural communities to promote sustainable development in rural areas, avoiding, however, the development of isolated homes in the countryside.
20. The Council Officer Report concludes that the proposal would not satisfy any of the circumstances outlined in paragraph 80 of the Framework that allow for isolated homes in the countryside. Hence, although not explicitly stated, the logical conclusion of the Council is that it considers the proposal to constitute an isolated home in the countryside.
21. As noted, the site falls outside the designated development boundary of Clee Hill. Moreover, the proposal would be separated from the built-up boundary of the village, as perceived on the ground, which I consider ends at the nearest 2 properties and their domestic curtilages located north of the proposed access, on either side of Tenbury Road. I consider the few dwellings located opposite the site, on the eastern side of Tenbury Road, are also located outside of the built-up boundary of the village, as perceived on the ground.
22. There is an area of grassland located between the most northern of these properties and the next dwelling north of it on the eastern side of Tenbury Road; and there would be an area of grassland and section of field located between the proposed development and the nearest house north of it on the western side of Tenbury Road. Having regard to the judgement in the *Braintree*² case, I consider the proposal would not form part of a group of dwellings and would not be perceived as being physically related to the built-up boundary of the village. As such, I conclude that the proposal would create an isolated dwelling in the countryside *vis-à-vis* paragraph 80 of the Framework.
23. The appellant has suggested that the proposed site and development could be sited nearer to the road and closer to the northern boundary of the field within which it would be located. However, this is not the scheme before me.
24. I consider the addition of the proposed dwelling would make a minor contribution to maintaining the vitality of surrounding rural communities. However, as the scale of the contribution would be limited, and the proposal would lead to an isolated home in the countryside, I attach little weight to this aspect in support of the proposal.
25. I appreciate the Government's objective to significantly boost the supply of homes. As the proposal is for one dwelling only, I have attached limited weight to this matter.
26. The appellant contends that the proposed dwelling will be constructed using methods to reduce energy consumption. Although I have not been provided with the details of such aspects, given the relatively small scale of the proposal, I attach only limited weight to this factor.
27. It is asserted in the appellant's Statement that he cannot afford to get onto the housing ladder and that he has strong local connection to Clee Hill by virtue of

² *Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd* [2018] EWCA Civ 610

family connections and his business. I have not been provided with any evidence of the appellant's financial status, local connections, or business. With regard to the latter point, ie the appellant's business, this appears to conflict with evidence in the Planning, Design and Access Statement, which states that the appellant is a tradesman. For these reasons, I attach no weight to these matters.

Accessibility to services and facilities

28. As noted, Clee Hill is designated as a Community Hub. In addition to its designation, I observed during my visit that the village has a range of services and facilities; the extent and range would be sufficient to provide for many of the day to day needs of future occupiers of the proposed dwelling. Nevertheless, future occupiers of the proposed dwelling would still be likely to want and need to travel beyond the village to access a range of employment opportunities and other services and facilities not available in the village. I therefore consider it likely that future occupiers of the proposed dwelling would use a car as their primary mode of transport. However, this would barely be any different to existing or future residents within the development boundary of the Community Hub. The proximity of the proposed dwelling to the range of services and facilities available within the village weighs in favour of the proposal, a factor to which I attach moderate weight.

Self-build and custom housebuilding

29. As noted, the proposed is for a self-build dwelling in accordance with relevant Right to Build legislation. The legislation allows for both open market and affordable housing. The appellant contends that such legislation is a material planning consideration in the determination of the appeal, and I agree.
30. The legislation requires local authorities to keep a register of those seeking to acquire serviced plots in the area for their own self-build or custom house building. The Council has a register and therefore it satisfies this requirement of the legislation.
31. The legislation also requires the relevant authority to give enough suitable development permissions to meet the identified demand. The appellant suggests that the Council are not meeting this requirement of the legislation, particularly in the south of the County.
32. The Planning, Design and Access Statement and the Self Build Statement state that the appellant is to become a registrant on Shropshire Council's self-build register. However, the appellant's Planning Appeal Statement states that the appellant has been on the register since 2020, and that the only service plot they have been offered is a site for self-build in Shrewsbury, which is some 30 miles from their family and business. Hence, the evidence submitted regarding the appellant's status *vis a vis* the Council's register is conflicting.
33. Regardless of whether the appellant has only recently registered, or he has been on the register since 2020, as the Council has 3 years from the end of each base period to provide permissions on suitable sites for registrants, the appellant would not have been on the register for the period the Council has to offer them a suitable site. I therefore attach little weight to this matter.
34. The Planning Practice Guidance (PPG) advises authorities to use the preferences expressed by registrants to guide their decisions, as this will assist

in ensuring the sites which are given permission are ones that people are keen to develop. However, there is no duty on a relevant authority to permission land which specifically meets the requirements expressed by registrants³.

35. The evidence submitted by both parties regarding how many people or associations are on the register, and how many have been taken off the register since it began, is at best patchy, inconsistent, and not up to date. For example, figures provided in the appellant's Self Build Statement refer to the first 3-year period of the register, ie January 2015 to October 2018. The appellant asserts that during this period the register included 94 registrants for self-build dwellings, and therefore the Council were 430 plots short of its legal target.
36. Evidence submitted by the Council covers the period of January 2015 to October 2020. From these figures, for the 3-year period the appellant refers to, the Council consider it has granted planning permission for 94 affordable self-build plots (a figure that corresponds with that of the appellant) along with 458 open market self-build plots. When the Council were asked by the Planning Inspectorate during the appeal how many people had been taken off the register since it began, the reply provided was that it does not record such information. Additionally, the Council states that the data it does hold regarding applications for inclusion on the register and planning permissions granted on suitable plots, has not been updated since 30 October 2020, due to the impact of the Covid 19 pandemic.
37. The data the Council has provided suggests that between 14 January 2015 to 30 October 2020 it received a total of 576 applications to go on the register. During the same period, it granted planning permissions for 682 open market self-build and custom build plots, and 130 affordable self-build and custom build plots. Hence, these figures suggest that the Council granted more planning permissions for self-build and custom housebuilding than there were registrants on the register during the period between 14 January 2015 to 30 October 2020.
38. I acknowledge that the open market figure was identified via monitoring of applications for self-build relief from the Community Infrastructure Levy (CIL). However, the legislation does not specify how such permissions should be recorded. The PPG confirms that one of the acceptable methods is by identifying whether a CIL exemption has been granted for a particular development. Additionally, the PPG confirms that it is the responsibility of the relevant authority to ensure development permissions being counted meet the legislative requirements⁴.
39. For the reasons outlined above, it is not possible for me to conclude that the Council is not meeting its obligation under the Right to Build legislation to provide planning permissions to meet the identified demand.
40. The appellant contends that the Council has no specific policies to meet the requirements of the Right to Build legislation for open market housing across the area. Furthermore, he suggests that the SAMDev and CS are dated, that they were supposed to be up-dated early within the plan period, and that the

³ PPG Paragraph: 028 Reference ID: 57-028-20210508, Revision date: 08 02 2021

⁴ PPG Paragraph: 038 Reference ID: 57-028-20210508, Revision date: 08 02 2021

Right to Build legislation came into effect after the adoption of the CS and SAMDev.

41. As noted above, the CS and SAMDev are currently being reviewed. I consider this to be the appropriate process for reviewing development plan policies, including consideration of the responsibilities of the Council with respect to ensuring the housing needs of people with specific housing needs, including self-build, are met.
42. Additionally, the Council is not required by the legislation to have specific policies for self-build; though they are required to have policies that seek to meet the differing housing needs of the area. As the current housing policies are consistent with policies in the Framework, I afford them full weight. The Council's Five Year Housing Land Supply Statement published 19 March 2021, which the appellant has not challenged, concludes that the Council has a 5-year housing land supply. I therefore conclude that the policies that are most important for determining the proposal, with regard to the main issue of suitability of location for residential development, are up to date.
43. Even if I were to conclude that the policies most relevant for determining the appeal were out of date, paragraph 11 d) (i) advises that permission does not need to be granted if the application of policies in the Framework that protect areas of particular importance, which includes AONBs, provides a clear reason for refusing the proposed development. I have found that the proposal would harm the character and appearance of the SHAONB. I therefore conclude that paragraph 11 d) of the Framework is not engaged. For the reasons outlined, I therefore attach limited weight to the fact that the proposal is for a self-build dwelling.

Other Appeal Decisions

44. The appellant has drawn my attention to several other appeal decisions. However, as they relate to different areas of the country, and I do not have full details, I am not able to make any meaningful comparisons between them and the proposal before me.

Planning obligation

45. As noted above, the appellant submitted a Unilateral Undertaking during the appeal. However, it is not necessary for me to consider whether this obligation meets the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations, as I am dismissing the appeal for other substantive reasons.

Conclusion

46. Notwithstanding my conclusions regarding the proposal making a small contribution to maintaining the vitality of rural communities and future occupiers of the proposal being able to access a range of services and facilities within the village that would meet many of their day-to-day needs, I have found that the proposal would cause other significant harm. Thus, it would undermine the strategic housing policies of the area and it would have a detrimental impact on the character and appearance of the SHAONB.
47. Although the proposal is for a self-build dwelling, which is encouraged by Right to Build legislation, I am not able to conclude that the Council are not meeting

its responsibilities regarding such legislation. Consequently, I can only attribute limited weight to the fact that the proposal is for a self-build dwelling.

48. I conclude that none of the other considerations discussed outweigh the significant harms I have found and consequently there are no other considerations which lead me to conclude other than in accordance with the development plan.

49. For the reasons outlined, I therefore conclude that the appeal is dismissed.

J Williamson

INSPECTOR